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11 *Attorneys for Use Plaintiff and Plaintiff*
IMCO General Construction, Inc.

12 IN THE DISTRICT COURT OF GUAM

13 TERRITORY OF GUAM

14 UNITED STATES for the use and benefit
of IMCO GENERAL CONSTRUCTION,
15 INC., a Washington corporation, and
IMCO GENERAL CONSTRUCTION,
16 INC., a Washington corporation,

17 Plaintiffs,

18 v.

19 KEY TURF CONSTRUCTION, INC., a
California corporation; WESTERN
20 INSURANCE COMPANY, a Utah surety;
SOUTH GULF, INC., a Florida
21 corporation; INTERNATIONAL FIDELITY
INSURANCE COMPANY, a New Jersey
22 surety,

23 Defendants.
24

CIVIL ACTION NO. 1:11-cv-00018

**PLAINTIFF IMCO GENERAL
CONSTRUCTION, INC.'S BRIEF
REGARDING DAMAGES ON
DEFAULT AGAINST KEY TURF,
INC.**

25 In response to the Court's August 9, 2017 Order [ECF No. 91], Plaintiff IMCO
26 General Construction, Inc. ("IMCO") submits the following brief in support of its

1 Motion for Default Judgment (ECF No. 16) against Defendant Key Turf Construction,
2 Inc. ("Key Turf") and to summarize the evidence of IMCO's damages against Key
3 Turf. This Brief is supported by the Declaration of Todd Pike submitted herewith,
4 and the pleadings and file herein.

5 **I. DAMAGES SUMMARY**

6 IMCO's damages against Key Turf total **\$517,994.26**. Pike Decl. at ¶2.
7 Those damages are comprised of the following categories (which, in turn, are further
8 detailed in Section II below):

9	a. Contract Balance (Pay Apps 1-4):	\$ 90,519.53
10	b. Retainage (Pay Apps 1-4)	\$ 36,659.63
11	c. Delay Costs (Jan-May, 2011)	\$248,805.94
12	d. <u>Storage Fees (Jan, Feb 2011)</u>	<u>\$ 738.00</u>
13	Subtotal:	\$376,723.10
14	e. <u>Interest at 6% (5/31/2011 - 8/31/2017)</u>	<u>\$141,271.16</u>
15	Grand Total:	<u>\$517,994.26</u>

16 Pike Decl. at ¶3.

17 **II. DAMAGES DETAILS**

18 This action arises out of the public works construction project owned by the
19 United States Government known as Andersen AFB, Guam, Project AJJY 97-5120,
20 Contract FA5240-09-C-0009 (the "Project"), which took place in Guam. Dismissed
21 Defendant South Gulf, Inc. ("South Gulf") served as prime contractor. Key Turf
22 served as first-tier subcontractor to South Gulf, and IMCO served as a (second-tier)
23 subcontractor to Key Turf under a Subcontract Agreement dated July 26, 2010. Pike
24 Decl., Ex. A.

25 During late 2010 and early 2011, IMCO performed its work in accordance with
26 the Subcontract Agreement with Key Turf. Pike Decl. at ¶4. IMCO submitted its pay

1 applications to Key Turf. Pike Decl., Ex. B. Key Turf paid IMCO's early pay
2 applications, but then failed and refused to pay IMCO in full for the balance of its
3 work. *Id.* at ¶4, Ex. C. The contract billings and payments are broken down in
4 Exhibit C to the Pike Declaration. IMCO also received a later payment from South
5 Gulf for materials on hand, which was credited to Key Turf. See Pike Decl. at ¶4,
6 Ex. C.

7 In early 2011, Key Turf completely abandoned the Project and left the site,
8 which delayed IMCO and prevented IMCO from continuing with its work. Pike Decl.
9 at ¶5. During this time, the Government took away Key Turf's credentials to access
10 the site and took possession of IMCO's on-site equipment and materials. *Id.* For a
11 time, IMCO was also prevented from even gaining access to the site. *Id.* From
12 January 3, 2011 through the end of May, 2011, IMCO remained on standby and
13 during that time incurred costs while it awaited official direction from South Gulf and
14 the Government as to whether it would be allowed to finish its scope of work or
15 should completely demobilize the rest of its forces. *Id.*

16 IMCO sent a formal notice of delay to Key Turf on January 4, 2011 providing
17 notice of its delay claim for its delay and standby damages, and sent a formal follow
18 up notice to Key Turf on January 5, 2011 setting forth the daily rate of its delay and
19 standby costs. Pike Decl., Ex. D. During that delay/standby period (January 3,
20 2011-May 31, 2011), IMCO incurred equipment standby costs and supervisory
21 personnel costs, which it tracked in Daily Reports (Ex. F) and summarized in a table
22 attached as Exhibit E to the Pike Declaration. Pike Decl. at ¶5, Exs. E and F. IMCO
23 also incurred storage fees in the amount of \$738.00. *Id.*

24 IMCO is entitled to recover interest on the amounts owing (which have been
25 liquidated at least since May 31, 2011) at the statutory rate of six percent (6%) per
26 annum. See 18 GCA § 47106.

1 **III. CONCLUSION**

2 Based on the foregoing, and on the other moving papers submitted
3 previously, the Court should enter an order of default in IMCO's favor against Key
4 Turf, Inc. in the amount of \$517,994.26, plus post-judgment interest at the statutory
5 rate until paid.

6 DATED at Portland, Oregon this 24th day of August, 2017.

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